



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 1710-99
29 August 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: FORMER [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) NCPB ltr 5420 Ser:00-13, 26 Jun 00
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show that he was retired by reason of physical disability, vice discharged with entitlement to disability severance pay.

2. The Board, consisting of Mses. Moidel and Schnittman and Mr. Bartlett., reviewed Petitioner's allegations of error and injustice on 17 August 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner was evaluated by a medical board on 6 June 1996, and was noted to have skeletal, eye and cardiovascular manifestations of Marfan's syndrome. Required limitations of activity included no heavy lifting or participation in competitive or contact sports. The medical board recommended medical prophylaxis against subacute bacterial endocarditis, and the lifelong use of a beta blocker medication. In the opinion of the medical board, Petitioner's condition prevented him from performing the duties of his rate "as well as the rigors of sea duty." On 20 August 1996, the President, Physical Evaluation Board (PEB) requested that a psychiatric addendum to the medical board be prepared, and that the medical

board clarify the term "heavy lifting" and "specify what he can't do aboard a ship that he would have to do as an MMC." A psychiatric addendum was prepared on 24 September 1996, and Petitioner was given a diagnosis of depressive disorder, not otherwise specified. The author of the addendum noted that Petitioner had experienced anger, irritability, depressed and anxious moods, social withdrawal, crying spells, apathy about his future, anhedonia and anergy with sleep disturbance, occasional passive suicidal thoughts, and concerns about the welfare of his wife and young children. The board noted that he had been undergoing psychiatric therapy since February 1996, and that he would continue to need therapy. On 5 November 1996, the senior member of the medical board advised the PEB that Petitioner should not lift any objects weighing more than twenty pounds. He noted that patients with Marfan's syndrome are at risk for aortic rupture, and that the chances of rupture are increased if the patient is subjected to stresses which can increase his systolic blood pressure, such as responding to any shipboard emergency. If the patient were to have a cardiac event, "shipboard medical capability would be unable to save him." On 7 November 1996, the executive officer of Petitioner's ship advised the PEB that as a machinist mate aboard ship, Petitioner would be directly involved in multiple activities that would require exceeding the twenty pound limitation. The executive officer noted that in the event of an emergency, Petitioner would have to don equipment and engage in activities which would cause him to exceed his medical limitations. The executive officer also noted that even if Petitioner were to be restricted to a desk job, he would face the danger of receiving trauma to his chest in the event of an unexpected roll, collision or grounding of the ship. On 16 December 1996, the PEB made preliminary findings that Petitioner was unfit for duty because of Marfan's syndrome, which it rated at 10% under Department of Veterans Affairs (VA) code 7099-7000. The depressive disorder was classified as a category II condition, which contributed to the unfitting condition, but was not separately unfitting or ratable. Petitioner accepted those findings on 6 January 1997, and he was discharged with entitlement to disability severance pay on 28 February 1997. He completed 13 years, 6 months and 27 days of active service. On 27 October 1997, the VA awarded him a 60% rating for Marfan's syndrome, and 10% for depressive disorder, effective from 1 March 1997.

d. In correspondence attached as enclosure (2), the Director, Naval Council of Personnel Boards advised the Board, in effect, that the available evidence does not support Petitioner's request for disability retirement. He noted that Petitioner suffers from a genetic condition that existed prior to his enlistment. Under DOD guidance in effect at that time, the condition was presumed to be aggravated by his service under the "eight-year" rule. (Note: the DOD guidance was rescinded for medical boards initiated 120 days or more after 14 November 1996. Under current law, effective 1 October 1999, Petitioner's condition would be ratable based on his completion of 8 years of active service.) The Director noted that Petitioner's condition was rated at 10% "...due primarily to the wording of the 6 June 1996 Medical Board which described a level of energy expenditure impairment much closer to that compatible with the 10% level under VASRD Code 7099-7000 than the 60% later awarded by the Department of Veterans Affairs. The 10% rating was considered appropriate because the preclusion of 'heavy lifting...competitive sports' contained in the Medical Board is not

housebound and unable to perform the walking around activities of daily living. The available record does not imply that such a harsh level of restriction existed at the time of petitioner's medical board. In fact, the petitioner was probably technically Fit for Duty, although not for sea duty, at the time his Medical Board was evaluated by the PEB." The Director recommended that the petition be denied.

e. SECNAVINST 1850.4C, then in effect, defined "ordinary manual labor" as work not involving sustained heavy energy expenditure, and included work performed by most skilled laborers, mechanics, and drivers. Strictly sedentary employment involved low energy expenditure and minimal body movement.

f. Under the VASRD provisions then in effect, as modified by SECNAVINST 1850.4C, the 60% rating for cardiovascular disease was generally applicable to those cases where more than light manual labor was precluded. The 30% rating was applicable where strenuous activity i.e., more than ordinary manual labor, was precluded. SECNAVINST 1850.4D, enclosure (9), which implements DOD Instruction 1332.39 of 14 November 1996, provides, in effect, that a 60% rating is appropriate for cardiovascular condition where activities such as walking 2.5 miles per hour, dancing, and light carpentry produce symptoms. The 30% rating is applicable where activities such as stair climbing, gardening, shoveling light earth, skating, bicycling at a speed of 9 to 10 miles per hour, carpentry, and swimming produce symptoms. The 10% rating is applicable where activities such as jogging, playing basketball, digging ditches, and sawing hardwood produces symptoms. The alternative criterion for the 10% rating is the need for constant medication.

CONCLUSION:

Upon review and consideration of all the evidence of record and notwithstanding the comments contained in enclosure (2), the Board concludes that Petitioner should have been retired by reason of physical disability. The Board notes that a prohibition on lifting objects weighing more than twenty pounds is a severe restriction of the normal activities of daily living and employment. It finds this restriction to be equivalent to the prohibition of engaging in more than ordinary manual labor. As such, Petitioner's condition should have been rated at 30%.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was not discharged by reason of physical disability on 28 February 1997.

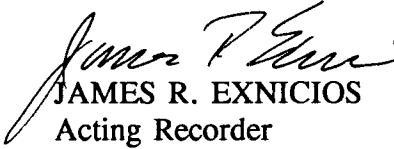
b. That Petitioner's naval record be further corrected to show that on 1 March 1997, he was permanently retired by reason of physical disability, pursuant to 10 U.S. Code 1201,

with a 30% rating under VASRD code 7099-7000.

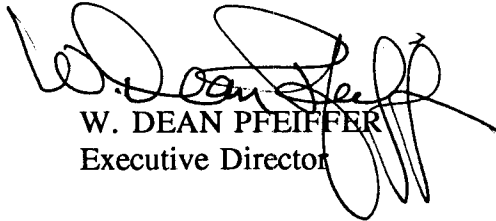
c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JAMES R. EXNICIOS
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.


W. DEAN PFEIFFER
Executive Director

Reviewed and approved:

 10-12-00

Joseph G. Lynch
Assistant General Counsel
(Manpower & Reserve Affairs)